ARC 0565C

UTILITIES DIVISION[199]

Notice of Termination

Pursuant to Iowa Code section 17A.4(1)"b," the Utilities Board (Board) gives notice that on December 26, 2012, the Board issued an order in Docket No. RMU-2012-0001, In re: Petition for Rule Making Regarding Recovering Certain Energy Related Costs Through An Automatic Adjustment Clause, "Order Terminating Rule Making." The Board commenced the rule making on July 9, 2012, to consider amendments proposed by Interstate Power and Light Company (IPL) in a petition for rule making that would impact the energy adjustment clause (EAC), contents of a utility's fuel procurement plan, and ratemaking treatment of emission allowances. IPL's petition for rule making was filed with the Board on May 10, 2012. IPL submitted proposed amendments to address recovery of four specific items through the EAC: chemical costs (needed for environmental compliance); allowances (needed for environmental compliance); renewable energy credits (RECs); and production tax credits (reflecting the output of renewable generation).

Notice of Intended Action for the proposed amendments was published in IAB Vol. XXXV, No. 3 (8/8/2012), p. 229, as **ARC 0237C**. Written comments addressing the proposed amendments were filed by IPL, MidAmerican Energy Company (MidAmerican), the Consumer Advocate Division of the Department of Justice, Ag Processing Inc. (Ag Processing), the Large Energy Group (LEG) (a group of 25 of the largest electric service customers of IPL), and the American Association of Retired Persons (AARP). An oral presentation was held on September 25, 2012. At the conclusion of the oral presentation, the Board gave participants an opportunity to file any additional comments by October 16, 2012.

In the Board's review of the written and oral comments, it is clear that there is no consensus on the proposed amendments and whether the costs sought to be recovered meet the tests for EAC cost recovery. The Board's criteria for inclusion in the EAC are found in 199 IAC 20.9(1). For EAC inclusion, the costs must be incurred in supplying energy; beyond the direct control of management; subject to important changes in level; an important part in determining the total cost to serve; and readily, precisely, and continuously segregated in the accounts of the utility.

Consumer Advocate, Ag Processing, LEG, and AARP were all concerned with expanding the category of environmental costs that may flow through the EAC without prior determination by the Board of the reasonableness of the costs, whether or not the items meet the EAC inclusion criteria, and possible excessive earnings by the utility if those costs are automatically recovered. If such costs were to flow through the EAC, the nonutility commenters said, those categories of costs should first be approved in a rate case proceeding, where the Board can specifically examine the reasonableness of the costs and whether those costs meet the EAC criteria. The nonutility commenters also noted that inclusion of such costs in the EAC increases customer rates without a thorough vetting of those costs in a rate proceeding, thereby reducing the utility's risk. There was a concern that IPL failed to show that expanding the items recoverable through the EAC would not lead to a return that exceeds IPL's cost of capital, resulting in excessive utility earnings.

Ag Processing, AARP, and LEG expressed concerns about a possible shift away from customer interests if electric bills could increase without further Board review. Ag Processing noted that stable electric costs are of critical importance for companies that operate in global and regional markets. LEG said that such increases harm all customers, including its members, who are among the highest-usage IPL customers. A more complete summary of the comments submitted by the rule-making participants is available in a staff memorandum dated December 5, 2012, that can be found on the Board's electronic filing Web site, https://efs.iowa.gov/efs/.

There is considerable uncertainty with respect to the outcome of the Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR) litigation and uncertainty as to whether the federal Mercury and Air Toxic Standards, known as MATS, will apply to new and existing generating plants. There are two lawsuits pending with respect to the application of MATS. This uncertainty makes it

difficult to consider changes to the EAC rules with respect to these potential environmental costs because the impacts on a utility's costs and revenues are unknown. The Board is reluctant to adopt rules to include additional costs or revenues in the EAC without having an adequate understanding of the magnitude of the costs or revenues at issue.

With respect to the specific costs for which IPL sought EAC inclusion, there is no compelling reason to include the costs in the EAC now. The chemical costs appear to be relatively stable and not subject to sudden changes in level, based on information submitted in the rule making. Changes to the EAC rules to reflect the new CSAPR allowances replacing CAIR allowances, as noted earlier, are not necessary at this time because of continuing court challenges to the CSAPR rules; the Board does not want to adopt rules that would encompass all successor federal environmental rules because the impacts are currently unknown. On the issue of renewable energy credits (RECs), IPL currently can flow RECs back to customers through a waiver issued in Docket No. WRU-05-10-150. Other utilities could ask for similar waivers, if they believe a waiver is appropriate, based on their unique circumstances. For the production tax credits, IPL customers receive these benefits through base rates, and there is no need for a change to provide for EAC flow-through at this time.

Some of the debate in the rule making dealt with whether the costs IPL sought to include for EAC recovery met the five criteria in 199 IAC 20.9(1). IPL argued that if an individual cost component, such as chemical costs, is similar in nature to other costs currently included in the EAC, then that particular cost should not have to meet all five criteria. In other words, IPL argued that the cost category should be examined as a whole, not with a focus on the individual cost components which might not meet all five criteria if analyzed separately. Costs that are imposed at one time might qualify for EAC inclusion because the costs would be treated as a bundle, while the identical bundle of costs imposed piecemeal over several years might receive different treatment because the individual costs, standing alone, do not meet EAC criteria; IPL argued that such costs should be treated the same. Others would argue that each individual cost component must meet the EAC criteria for inclusion. The Board need not decide this argument now but notes that it is an argument that likely will need to be addressed in a future rule making or rate proceeding where new costs are proposed for EAC recovery. In addition to a rule-making proceeding, a utility may propose an automatic adjustment rider for rates in a general rate case proceeding. See Iowa Code section 476.6(8).

After analysis and review of the comments, the Board believes that if the proposed amendments were adopted at this time, they may have an adverse impact on job creation in Iowa by increasing electricity prices without a thorough Board review of those costs. It may be appropriate to revisit some or all of this rule making in a rate case proceeding or after federal environmental standards are known.

Because of the uncertainty surrounding federal environmental standards and the unknown impact on utility costs and revenues and customer bills, the Board will not adopt the amendments as proposed by IPL and hereby terminates the rule making. The issues may be revisited in a rate proceeding or a rule-making docket when there is more certainty as to the costs involved and the most appropriate means for recovery of those costs.